

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JORGE MIRANDA-RIVAS,

Petitioner,

v.

HAROLD WICKHAM, et al.,

Respondents.

Case No. 3:16-cv-00549-MMD-WGC

ORDER

Petitioner has submitted a *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (ECF No. 1-1). Petitioner has submitted an application to proceed *in forma pauperis*. The application however, is incomplete; the financial certificate has not been completed and signed by an authorized officer, and petitioner has not provided the required inmate account statements. Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2.

Thus, the present action will be dismissed without prejudice to the filing of a new petition in a new action with either the \$5.00 filing fee or a completed application to proceed *in forma pauperis* on the proper form with both an inmate account statement for the past six (6) months and a properly executed financial certificate.

It does not appear from the papers presented that a dismissal without prejudice will materially affect a later analysis of any timeliness issue with regard to a new action filed in a timely manner.<sup>1</sup> Petitioner, at all times, remains responsible for properly

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<sup>1</sup>Miranda-Rivas indicates on the face of his petition that the Nevada Supreme Court affirmed the denial of his state postconviction petition on July 26, 2016. Moreover, this Court may take judicial notice of the state supreme court docket, which reflects that remittitur issued on the Nevada Supreme Court's affirmance of the denial of Miranda-Rivas' state postconviction petition on August 31, 2016. Case No. 69855.

1 exhausting his claims, for calculating the running of the federal limitation period as applied  
2 to his case, and for properly commencing a timely-filed federal habeas action.

3 It is therefore ordered that this action is dismissed without prejudice to the filing of  
4 a new petition in a new action with a properly completed application form to proceed *in*  
5 *forma pauperis*.

6 It is further ordered that petitioner's incomplete application to proceed in forma  
7 pauperis (ECF No. 1) is denied as moot.

8 It is further ordered that a certificate of appealability is denied, as jurists of reason  
9 would not find the Court's dismissal of this improperly commenced action without  
10 prejudice to be debatable or incorrect.

11 It is further ordered that the Clerk send petitioner two (2) copies each of an  
12 application form to proceed *in forma pauperis* for incarcerated persons and a noncapital  
13 Section 2254 habeas petition form, one (1) copy of the instructions for each form, and a  
14 copy of the papers that he submitted in this action.

15 It is further ordered that the Clerk enter judgment accordingly and close this case.

16 DATED THIS 19<sup>th</sup> day of October 2016.

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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE